

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 3.6. Air Toxics “Hot Spots” Fee Regulation

Article 3. Fees

§ 90704. State Board Adoption of Fees.

(a) The State Board shall annually adopt a regulation which meets the requirements of Health and Safety Code Section 44380(a). Districts whose fee schedules are included in this regulation under Section 90704(b) are subject to the provisions of subdivisions (d)-(i) of this section.

(b) The State Board may annually adopt a fee schedule which assesses a fee upon the operators of facilities subject to this regulation, and which identifies and provides for the recovery of both state costs and district costs to administer and implement the Act pursuant to Section 90700(b), for facilities located in districts that have completed all of the following requirements:

(1) The district board has approved, and adopted by resolution, the cost of implementing and administering the Act for the applicable fiscal year as specified in Section 90700(b)(2);

(2) The district has submitted a written request specifying the amount to be collected for the applicable fiscal year, through fees established by the State Board regulation, as calculated pursuant to Section 90704(d), (e), (f), (g), and (h) and including documentation of the costs;

(3) The district has submitted the resolution, request and documentation specified in subsections (1) and (2) to the State Board by April 1 preceding the applicable fiscal year.

(c) Any district whose fee schedule is included in this regulation pursuant to Section 90704(b)(1)-(3) may, as a substitute for this regulation, adopt a district fee rule that meets the requirements of Section 90700(b), provided that the district informs the Executive Officer of the State Board in writing.

(d) Calculation of Fees.

(1) The State Board shall establish the fee applicable to each facility for the recovery of state and district costs and shall notify each district in writing each year of the amount to be collected from each facility and of the amount of revenue which the district must remit to the State Board for reimbursement of state costs, as set forth in Table 1. When calculating the fees, the State Board shall use the State costs in Table 1 and the district costs in Table 2, and shall take into account and allow for the unanticipated closing of businesses, nonpayment of fees, and other circumstances which would result in a shortfall in anticipated revenue.

(2) The State Board shall calculate fees on the basis of the Facility Data List as set forth by the district by July 1 of the applicable fiscal year, except for facilities excluded under Section 90702(c) or covered by Section 90704(f) and (g). For purposes of calculation of a district's share of State costs under this subdivision and under Section 90703(a), the number of State Industrywide facilities shall be used instead of the number of Industrywide facilities. Facilities that meet the Industrywide Facility definition but do not meet the State Industrywide Facility definition shall be placed in the appropriate Facility Program Category for purposes of calculation of a district's share of the State's costs. Districts may still assess facilities that meet the Industrywide definition but not the State Industrywide definition the fees listed in Table 4.

(e) Fees Based on Facility Program Category.

(1) The State Board shall provide a flat fee per facility based on the facility program category of the facility as set forth in Tables 3 and 4. The Facility Program Categories for Table 3 are Prioritization Score Greater Than Ten (10.0) (Complex); Prioritization Score Greater Ten (10.0) (Medium); Prioritization Score Greater Than Ten (10.0) (Simple); Risk of 10.0 to Less Than 50.0 Per Million (Complex); Risk of 10.0 to Less Than 50.0 Per Million (Medium); Risk of 10.0 to Less Than 50.0 Per Million (Simple); Risk of 50.0 to Less Than 100.0 Per Million (Complex); Risk of 50.0 to Less Than 100.0 Per Million (Medium); Risk of 50.0 to Less Than 100.0 Per Million (Simple); Risk of 100.0 Per Million, or Greater (Complex); Risk of 100.0 Per Million, or Greater (Medium); Risk of 100.0 Per Million, or Greater (Simple); Tracking (Complex); Tracking (Medium); Tracking (Simple); Unprioritized (Complex); Unprioritized (Medium); and Unprioritized (Simple). The Facility Program Category for Table 4 is State Industrywide.

(2) A facility that becomes subject to the Act after State Board adoption of the Fee Regulation, and is required to prepare an Inventory Plan and Report during the applicable fiscal year in accordance with Sections 44340, 44341, and 44344 of the Health and Safety Code, shall pay the appropriate Unprioritized (Complex, Medium, or Simple) fee for that fiscal year.

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(3) A district shall provide to the State Board, by July 1 of the applicable fiscal year, a Facility Data List. The Facility Data List shall contain the following information: (a) the district abbreviation, (b) the county ID, (c) the name and facility identification number, (d) the Standard Industrial Classification Code of the facility, (e) the number of Source Classification Codes, (f) complexity (Simple, Medium, Complex), (g) prioritization score, (h) health risk assessment results, (i) whether or not the health risk assessment has been reviewed by OEHHA, (j) whether or not a screening risk assessment was performed, (k) reason excluded from calculation of the State's cost under the previously applicable fiscal year's Air Toxics Hot Spots Fee Regulation, (l) whether or not the facility is a state industrywide facility, (m) whether or not the facility is a small business as defined under Section 90701(aa), (n) whether or not the facility is an District Update Facility as defined under Section 90701(c), and (o) former Facility Program Category for the previously applicable fiscal year. The district shall provide the SIC Code for facilities being added to the State Industrywide Facility category.

(f) Specified Flat Fees.

(1) An Industrywide Facility shall be assessed the flat fee specified in Table 4. If a facility was previously assessed, and has paid, a fee pursuant to the Facility Program Categories specified for Table 4, subsequent fees pursuant to Table 4 shall be waived by the district, if the district determines that there are insignificant costs with respect to said facility under the Act.

(2) A facility in the State Industrywide Facility Program Category, as defined by Section 90701(ae), shall be assessed the flat fee specified in Table 4.

(g) Other Flat Fees.

(1) Pursuant to the provisions of Section 44380.5 of the Health and Safety Code, the supplemental fee which may be assessed upon the operator of a facility, to cover the direct costs to the district to review the information supplied, shall be no higher than \$2,000.

(2) The maximum fee that a small business, as defined in Section 90701(aa), shall pay will be \$300.

(3) If in the judgment of a district the action will not result in a shortfall in revenue, a district may request the fee for the Unprioritized (Simple) category be set at no more than \$800.

(4) Pursuant to the provisions of Section 44344.4(b) of the Health and Safety Code, the operator of an Update Facility may be assessed a fee of no higher than \$125 to cover the direct cost to the district to review the facility's quadrennial emission inventory update submitted under Health and Safety Code Section 44344. Beginning with Fiscal Year 1997-98, a district may assess a higher fee to review quadrennial emission inventory updates if it adopts written findings that the costs of processing the emission inventory update exceed \$125 and submits those findings to the State Board by April 1 preceding the applicable fiscal year. The fee adopted shall be no higher than that supported by the written findings.

(h) Costs to be recovered by the regulation adopted by the State Board pursuant to subdivision (b) of this section shall be calculated as follows: Each district board shall approve its anticipated costs to implement and administer the Act. The Air Resources Board will subtract from this amount anticipated revenues from collection of the flat fee specified in Section 90704(f); and any excess revenues obtained by the district pursuant to Section 90705(c). When submitting board-approved program costs to the State Board, the district shall include a breakdown of how the collected fees will be used.

(i) Districts shall reimburse the State in accordance with Health and Safety Code Section 44361(c) for review of facility risk assessments submitted to the State after March 31, 1995.

NOTE: Authority cited: Sections 39600, 39601, 44344.4 and 44380, Health and Safety Code. Reference: Sections 44320, 44322, 44344.4, 44380 and 44380.5, Health and Safety Code.

REFERENCE